

# **Chesterfield County**

## **Department Of Utilities**



### **Industrial Waste Pretreatment Program**

### **Enforcement Response Plan**

**August 2000**

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## **I. Introduction**

In accordance with the Code of Federal Regulations (CFR) Section 403.8 F(5):

*The POTW shall develop and implement an enforcement response plan [ERP]. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:*

- (i) Describe how the POTW will investigate instances of noncompliance;*
- (ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;*
- (iii) Identify (by title) the official(s) responsible for each type of response;*
- (iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (2).*

and along with Chesterfield County Code Article IV, Section 18-112, the Industrial Waste Pretreatment Program (IWPP) has developed an enforcement response plan for Chesterfield County.

This ERP allows for a range of responses for a typical pretreatment violation. It is not intended to provide a specific response to each individual type of event that may occur.

## **II. Enforcement Administration**

Compliance reports from industrial users and the IWPP data are reviewed by the Pretreatment Program Manager and the Engineering Assistant(s). Non-compliance with permit limits are noted and responded to in accordance with the range of responses described herein. Non-Compliance notifications are sent to the Industrial Users by certified mail.

Significant Non Compliance (SNC) determination is made at the end of each quarter and appropriate enforcement action is taken.

Inspection violations are noted at the time of inspection and enforcement action taken soon thereafter. In case of emergency, immediate action can be initiated to avert any potential disaster.

Any spill or slug loads are also handled as soon as reported. If the spill has the potential to enter the sewer system, wastewater treatment plants and pump stations are to be notified immediately. Follow-up enforcement is then undertaken and shall include measures to prevent future incidences. SIU's are evaluated for the requirement of Slug Control Plans every other year.

### **III. Enforcement Strategy**

Once a noncompliance situation has been identified, the IWPP will consider the following criteria when determining the level of response:

- Magnitude of the violation
- Duration of the violation
- Effect of the violation on the POTW
- Effect of the violation on the receiving waters
- Compliance history of the industrial user
- Good faith of the industrial user

Following are the types of Enforcement Action that may be undertaken by the POTW:

- **Informal Response**  
An informal response may be either a documented phone call, written warning, or a meeting notifying the IU of minor incidences that have occurred and that need to be corrected. Repeat performance of the same incidence, or escalation of the incidence will result in higher enforcement action.
- **Notice of Violation (NOV)**  
An NOV is the initial formal enforcement action for a violation. The certified letter notifies IU's signatory authority of the violation and requires the following:
  1. Immediate corrective action or steps being taken to correct the problem;
  2. Sampling of the parameter in violation within thirty days;
  3. Written response within ten business days of receipt of NOV.
- **Compliance Meeting**  
A Compliance Meeting is when the POTW directs the IU to achieve compliance by a certain specified date.
- **Show Cause Meeting**  
A Show Cause Meeting is when the IU and the POTW meet to discuss the cause and effect of the violation, as well as the enforcement action the IU will be subjected to. The IU may present its case as to why the violation occurred and why further enforcement should not be applied. Corrective actions to be undertaken by the IU can also be a part of this meeting.
- **Administrative Order (AO)**  
An Administrative Order is notification to the IU to undertake or to cease specified activities. It is the first formal response to significant noncompliance (unless evidence permits stricter response). It contains the compliance schedule to perform specified activities. In addition, it specifies the name of the parties involved, statement of the facts, the requirement to ensure compliance and the enforcement associated with the future non-compliance.
- **Compliance Schedule**  
A Compliance Schedule is a formal schedule established for the non-compliant IU to achieve compliance. It is established for existing IUs to meet the categorical pretreatment standards or local standards. It contains increments of progress in the form of dates for the commencement and completion of major events leading to compliance. In addition, all compliance schedules shall contain the following:
  1. Monitoring requirements with the location for monitoring;
  2. How the data will be used for evaluating compliance;
  3. Enforcement associated with non-compliance;

4. Closure date after which IU will be considered either non-compliant with the established compliance schedule, or judged for compliance.

Compliance schedules can either be incorporated in the permit or in a separate document.

- Administrative Fines  
Administrative fines will be imposed when authorized by the Director of Utilities/County Attorney and when likely to be an effective tool to force the IU to correct the violation and comply with its permit.
- Cost Recovery  
In addition to administrative fines permitted by the Director of Utilities/County Attorney, the IU shall be responsible for paying the following costs incurred by the County for failure to comply with a compliance schedule:
  1. Cost of mileage and labor incurred in detecting and correcting the violation.
  2. Laboratory analysis costs associated with detecting and correcting the violation.
  3. Additional treatment costs caused by the violation or associated with detecting and correcting the violation.
  4. Costs of any additional equipment acquired or expended by Chesterfield County for detecting or correcting the violation.
  5. Repair and/or replacement of any part of the sewerage system damaged by the violation.
  6. Any liability, damages, fines or penalties incurred by Chesterfield County as a result of the violation.
  7. Any and all expenses of outside professionals to include, but not limited to, engineers, scientists, and/or legal counsel.
  8. Other costs associated with the detecting and correcting of the violations.
- Judicial Action  
Judicial Action will be taken when it is deemed necessary to force the IU to correct the violation and comply with the permit. Judicial action may consist of a civil prosecution, a criminal prosecution or an action for injunction, at the discretion of the POTW and its counsel. As an alternative to judicial action, the POTW and IU may agree to a voluntary zero discharge of industrial waste by the IU pending correction of the violation.
- Termination of Service  
When all other enforcement responses have failed, the POTW may revoke the IU's permit and terminate service.

Violations that threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.

#### **IV. Definition of Noncompliance**

Noncompliance is any violation of one or more of the general prohibitions described in *40 CFR 403.8 (f)(1) and (2)*. These may also include an isolated exceedence of discharge limits, minor sampling, monitoring or reporting deficiencies, minor spill incident, missed milestone date or any other incident that the IWPP deems minor.

## **V. Definition of Violations**

### **Minor Sampling, Monitoring, or Reporting Deficiencies**

- Reports/Correspondence submitted up to 10 business days late
- Incomplete reports and/or chain-of-custody - First offense
- Transcription error
- Improper sampling or analytical procedure - First offense
- Late notification of violation to POTW - First offense
- Failure to report any operational changes which affects the discharge flow rate but does not impact the permit - First offense
- Any other violation categorized as minor sampling, monitoring or reporting deficiencies by the POTW.

### **Major Sampling, Monitoring, or Reporting Deficiencies**

- Reports/Correspondence late by 10 - 30 business days
- Sampling point not accessible to the POTW
- Document without Certification
- Failure to report any operational changes which affects the discharge flow rate and impacts the permit
- Incomplete report or chain-of-custody information - Repeat offense
- Failure to submit all the information that leads to the determination of a category of an IU
- Violation of analytical procedure (40 CFR 136)
- Failure to sample for a parameter
- Failure to report slug load discharge, illegal discharges or spills with no damage to POTW
- Unacceptable explanation for violation
- Improper sampling or analytical procedure - repeat offense
- Any other violation categorized as “Major sampling, monitoring or reporting deficiencies” by the POTW

### **Critical Sampling, Monitoring, or Reporting Deficiencies**

- Reports greater than thirty (30) days late (SNC)
- Complete failure to sample, monitor, or report as per the requirements found in the facility's permit.
- Any deficiency of sampling, monitoring, or reporting procedure which places IU in SNC
- Failure to respond to a Show Cause or Administrative Order
- Illegal or unauthorized discharge that results in damage to the POTW
- Any violation of sampling, monitoring, or reporting procedures which directly or indirectly contributes to or is responsible for violation of POTW's VPDES Permit.
- Any other violation categorized as critical sampling, monitoring or reporting deficiencies by the POTW

### **Unauthorized Discharge**

Discharge of any pollutant(s) from a location, process, source or categorical operation that has not been previously approved, identified or permitted.

### **Damages to the POTW**

Occurs when the discharge from an IU causes:

- Harm to the collection system, its accessories and wastewater treatment plant
- Interference with the biological operations of the plant
- Deteriorates the air quality
- Deteriorates the sludge quality
- Causes the POTW to fail its VPDES permit

**VI. Responsible Personnel**

<b>Enforcement Response</b>	<b>Position</b>
<b>Informal response (documented)</b>	<b>Engineering Assistant</b>
<b>Sampling responsibilities</b>	<b>Engineering Assistant</b>
<b>Inspection responsibilities</b>	<b>Engineering Assistant</b>
<b>Standards review meeting</b>	<b>Pretreatment Program Manager</b>
<b>NOV</b>	<b>Pretreatment Program Manager</b>
<b>Show cause meeting</b>	<b>Pretreatment Program Manager</b>
<b>Compliance meeting</b>	<b>Pretreatment Program Manager</b>
<b>Administrative Order</b>	<b>Director of Utilities</b>
<b>Compliance Schedule</b>	<b>Director of Utilities</b>
<b>Terminate service</b>	<b>Director of Utilities</b>
<b>Administrative Fine/Cost recovery</b>	<b>Director of Utilities/County Attorney</b>
<b>Judicial action</b>	<b>County Attorney</b>

## **VII. Violations and possible responses**

### **A. Discharge Parameter Violation**

<b>Violation</b>	<b>Nature or Frequency of Violation</b>	<b>Status</b>	<b>Range of Responses</b>
<b>Exceedence of discharge limits.</b>	<b>Isolated, non-significant</b>	<b>Non-compliance</b>	<b>NOV</b>
	<b>Frequent, repeat offense, non-significant (exceeding one/quarter or four/calendar year)</b>	<b>Non-compliance</b>	<b>NOV with increased sampling frequency</b>
	<b>Exceedence of TRC value by a frequency of 33% or more in six month and/or exceedence of permit limit by a frequency of 66% or more in six month span or as stated in 40 CFR 403.</b>	<b>Significant non-compliance</b>	<b>I. AO and Publishing in the newspaper II. Cost recovery III. Administrative Fine IV. Judicial Action/ Zero discharge V. Terminate Services</b>
	<b>Any instance with POTW damage or direct cause for violation of POTW's VPDES Permit - SNC.</b>	<b>Significant non-compliance</b>	<b>I. AO to halt discharge and Publishing in the newspaper II. Cost recovery III. Administrative Fine IV. Judicial Action/ Zero discharge V. Terminate Services</b>
<b>Waste stream dilution in lieu of treatment as described in Chesterfield County Code for Industrial Waste Discharge</b>	<b>Isolated, non-significant</b>	<b>Non-compliance</b>	<b>I. Informal Response II. NOV</b>
	<b>Frequent, repeat offense, non-significant (exceeding one/quarter or four/calendar year)</b>	<b>Non-compliance</b>	<b>I. NOV II. AO with publishing</b>
<b>Slug load discharge.</b>	<b>Isolated- with no damage to POTW.</b>	<b>Non-compliance</b>	<b>NOV</b>
	<b>Frequent - more than one/calendar year with no damage to POTW</b>	<b>Significant non-compliance</b>	<b>AO with publishing and upgrading SPCC plan</b>
	<b>Any instance with POTW damage or direct cause for violation of POTW's VPDES Permit - SNC.</b>	<b>Significant non-compliance</b>	<b>I. AO to halt discharge and Publishing in the newspaper II. Cost recovery III. Administrative Fine IV. Judicial Action/ Zero discharge V. Terminate Services</b>



<b>Violation</b>	<b>Nature or Frequency of Violation</b>	<b>Status</b>	<b>Range of Responses</b>
<b>Unauthorized/non- permitted discharge</b>	<b>Any instance with no damage to POTW</b>	<b>Non-compliance</b>	<b>NOV</b>
	<b>Any instance with POTW damage or direct cause for violation of POTW's VPDES Permit - SNC.</b>	<b>Significant non-compliance</b>	<b>I. AO to halt discharge and Publishing in the newspaper II. Cost recovery III. Administrative Fine IV. Judicial Action/ Zero discharge V. Terminate Services</b>
<b>Illegal/RCRA hazardous waste discharge</b>	<b>Any Instance</b>	<b>Significant non-compliance</b>	<b>I. AO to halt discharge and Publishing in the newspaper II. Cost recovery III. Administrative Fine IV. Judicial Action/ Zero discharge V. Terminate Services</b>

**B. Sampling, Monitoring and Reporting Violations**

<b>Violation</b>	<b>Nature or Frequency of Violation</b>	<b>Status</b>	<b>Range of Responses</b>
<b>Minor sampling, monitoring, or reporting deficiencies.</b>	<b>Isolated or infrequent</b>	<b>Non-compliance</b>	<b>I. Informal Response II. NOV</b>
	<b>Frequent, repeat offense, non-significant (exceeding one/quarter or four/calendar year)</b>	<b>Non-compliance</b>	<b>NOV</b>
<b>Major sampling, monitoring, or reporting deficiencies.</b>	<b>Isolated or infrequent</b>	<b>Non-compliance</b>	<b>I. NOV II. NOV with increased sampling frequency</b>
	<b>Frequent, repeat offense (exceeding one/quarter or four/calendar year)</b>	<b>Non-compliance</b>	<b>I. NOV with increased sampling frequency II. AO with publishing</b>
<b>Critical sampling, monitoring, or reporting deficiencies.</b>	<b>Any instance.</b>	<b>Significant non-compliance</b>	<b>I. AO with publishing II. Administrative Fine III. Judicial Action IV. Termination of Service</b>
<b>Falsification of sampling, monitoring, or reporting requirements.</b>	<b>Any instance</b>	<b>Significant non-compliance</b>	<b>I. Administrative fine II. Judicial action – criminal prosecution III. Termination of Service</b>
<b>Failure to report changed discharge</b>	<b>Any instance with no impact on the permit</b>	<b>Non-compliance</b>	<b>Informal Response</b>
	<b>Any instance with impact on the permit</b>	<b>Non-compliance</b>	<b>NOV with show cause</b>
<b>Failure to obtain permit before discharge</b>	<b>Any instance</b>	<b>Non-compliance</b>	<b>NOV, show cause</b>
<b>Failure to inform POTW of the ownership change</b>	<b>Any instance</b>	<b>Non-compliance</b>	<b>NOV</b>
<b>Failure to install monitoring equipment including a monitoring manhole as required</b>	<b>Any instance</b>	<b>Non-compliance</b>	<b>NOV with the requirement to immediately initiate the installation of equipment</b>
<b>Tampering with monitoring equipment</b>	<b>Any Instance</b>	<b>Significant non-compliance</b>	<b>I. AO with publishing and administrative fine II. Judicial action</b>

### C. Other Types of Violations

Violation	Nature or Frequency of Violation	Status	Range of Responses
Entry denial.	Entry denied or consent withdrawn. Copies of records denied.	Non-Compliance	Obtain search warrant and return to IU.
Inadequate record keeping.	Incomplete or missing records	Non-Compliance	I. Informal Response II. NOV
	Repeat Offense	Non-compliance	I. NOV II. AO with publishing and fine.
Failure to properly operate and maintain pretreatment facility.	Any instance.	Non-compliance	I. Informal Response II. NOV III. AO with publishing and immediate corrective action

### D. Compliance Schedule Violation

Violation	Nature or Frequency of Violation	Status	Range of Responses
Missed milestone date.	Will not affect other milestone dates on compliance schedule. No valid cause for missing the deadline	Non-compliance	I. Informal Response II. NOV
	Will disrupt compliance schedule timetable - Violation for valid cause.	Non-compliance	I. NOV with show cause meeting II. AO to re-establish timetable
	Will disrupt compliance schedule timetable - Violation <u>not</u> for valid cause.	Significant Non-compliance	I. AO with publishing and fines II. Re-establish the compliance schedule
Missed final date of achieving compliance for which the schedule was established - the parameter was in violation at least once	Violation after milestone final date due to strike, act of God, national crises, etc.	Non-compliance	I. Informal Response II. AO to re-establish timetable
	Sampling or monitoring within thirty days of milestone final date yielded more than one violation for the compliance schedule parameter	Significant non-compliance	NOV with Show Cause
	Sampling or monitoring after thirty days and before the closure date yielded more than one violation for the compliance schedule parameter	Significant non-compliance	I. AO with publishing and fines II. Show cause III. Administrative Fine/Cost Recovery IV. Judicial Action/ Zero discharge V. Terminate Services
Failure to meet reporting requirements.	Did not submit report but did complete milestone.	Non-compliance	NOV
	Did not submit report, did not complete milestone.	Significant non-compliance	AO with publishing and fine.
Reporting false information.	Any instance.	Significant non-compliance	I. Judicial Action/ criminal prosecution II. Terminate Service

### **VIII. Determination of Fines**

Administrative fines shall have the following component:

- a) Cost Recovery which could include legal cost, replacement or repair of the infrastructure damaged by the discharge, clean up cost, operating losses and any other cost associated with restoration due to the discharge
- b) Fines can be collected on case-by-case basis. The amount shall be determined by County Ordinance. Supplemental Environmental Projects to benefit the community as well as clean-up can be undertaken by the IU, if the POTW determines the action to be appropriate. Chesterfield County has the authority to assess administrative fines in the amount of \$25,000 per day per violation. Following factors are considered in determining administrative fines on a case-by-case basis:
  - The extent of non-compliance
  - The amount, toxicity and the nature of pollutant discharged
  - The duration and the magnitude of violation
  - The effect of violation on the receiving waters
  - The effect of violation on the POTW
  - The cost of enforcement to POTW
  - The effect of violation on the ambient atmosphere
  - Extent of immediate steps taken by the violator to curb the violation
  - IU's compliance history
  - The degree of Willfulness or negligence of I
  - The degree of control IU had over the occurrence of incidence
  - Willingness to participate in the Supplemental Environmental Project
  - The economic benefit achieved by non-compliance
  - Any other factor that can be used for the assessment of administrative fine

### **IX. Review/Response Timetable**

1. Review compliance report within 5 - 7 days of receipt.
2. Take initial action:
  - Informal response (1 - 2 days)
  - Issue NOV's (3 - 5 days)
  - Issue AO's (5 - 10 days)
  - Show cause meeting (5 - 10 days)
  - Compliance meeting (5 - 10 days)
  - Pursue judicial action (20 - 25 days)
  - File criminal charges (when evidence permits)
3. Take follow-up action:
  - Informal response → issue NOV or AO (10 -15 days)
  - NOV → issue fine or AO (30 days)
  - AO → issue fine, show cause, judicial action (30 - 60 days)
  - Judicial action → terminate service
4. Industry response time for any initial or follow-up action: 10 - 15 days, > 30 days → SNC
5. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.